

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5396 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1-2 yes 3 to 5 No

NC BHATT

Versus

CONTROLLER

Appearance:

MR AS SUPEHIA for Petitioner

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 23/10/97

ORAL JUDGEMENT

The issue involved in this Special Civil Application can be disposed of at the motion stage itself. The issue is whether a service of a convicted employee can be terminated in spite of the fact that the appeal against his conviction has been admitted by the appellate Court for consideration and sentence has been suspended.

The matrix of the case giving rise to the issue

deserves brief notice. The petitioner has been convicted for offences under Section 13(1)(d), 13(2) of the Anti Corruption Bureau Act, 1988 and sentenced to undergo one year's rigorous imprisonment and to pay fine of Rs. 100/-. The respondent Controller, Food and Civil Supplies, served a notice dated 23.3.1994 to the petitioner to show cause as to why his services be not terminated as he has been convicted and sentenced by the competent court. The petitioner replied stating that his appeal against the order of conviction is pending before the High Court and the sentence pending appeal has been suspended. However, the respondent by order dated 1.11.1994 dismissed the petitioner from service. He preferred appeal against the said order before the Gujarat Civil Service Tribunal. By judgement dated 12.6.1995 the Tribunal dismissed the appeal. Hence this petition.

It seems apt to refer some of the decisions of this court and that of the apex court. A Full Bench of this court in P.D. WAGHELA AND OTHERS VS. G.C. RAIGER, Deputy I.G.P. & Others reported in 1993(2) G.L.H. 1005 dealing with Article 311(2) clause (a) to the second proviso held that pendency of an appeal or revision against conviction will not alter the position and action taken on the basis of conviction need not conform to clause (2) of Article 311. The court also held that the term 'conviction' occurring of clause (a) of second proviso to clause (2) of Article 311 must be by a competent criminal court in the first instance. Therefore, once a conviction is recorded by the court at the first instance, it is open for the disciplinary authority to examine the conduct of the employee which has led to his conviction on a criminal charge and the authority is not required to wait for the decision of the appellate or revisional court.

The apex court in DY. DIRECTOR OF COLLEGIATE EDUCATION (ADMN.) VS. S. NAGOOR MEERA reported in AIR 1995 SC 1364 held that dismissal or removal of a government servant is not barred once a government servant is convicted only on the ground that the sentence has been suspended by the appellate court or the accused has been released on bail pending appeal. The court further held that appropriate authority need not wait for decision of the appeal filed against conviction.

In STATE OF TAMIL NADU VS. A. JAGANATHAN reported in JT 1996(6) SC 621 the apex court held that merely because sentence under Section 389 of Cr.P.C. is suspended or the accused is released on bail, the

conviction does not cease to operate. The apex court also advised the courts that a discretionary power under Section 389(1) and 482 of the Criminal Procedure Code should not be exercised for trifling reasons. In the said case, the High Court suspended the conviction only on the ground that if the conviction is not stayed the respondents will recover the payment of stipend etc. The court held that if such trifling matters are taken into consideration then every conviction will have to be suspended pending appeal or revision involving a slightest disadvantage to the convict. The court also found that the High Court did not consider at all the moral conduct of the accused respondent inasmuch as that respondent, a police inspector, was convicted for offences under Section 392, 280 and 466 of I.P.C. while the other respondents were convicted under the provisions of Prevention of Corruption Act. It was expressed that discretionary powers are not required to be exercised in such cases.

Thus from the aforesaid decisions it emerges that once a conviction is recorded by the criminal court at the first instance, it is open for the disciplinary authority to examine the conduct of the Government employee which has led to his conviction on a criminal charge and the defence that the appeal against the conviction is pending and sentence has been suspended is no ground unless the conviction has been stayed by the appellate court.

The next question which arises is whether the appellate court has power under Section 389 of Code of Criminal Procedure to stay the effect of conviction. This question came up for consideration before the apex court in RAMA NARANG AND RAMESH NARANG AND OTHERS reported in JT 1995(1) SC 515. Considering the provisions of Section 389 along with Section 374 of Code of Criminal Procedure the court found that the appeal is preferred under Section 374 of the Code against both conviction and sentence and therefore there is no reason to place a narrow interpretation on Section 389(1) of the Code not to extend for suspension of order of conviction. Thus, in view of the apex court's decision the court has a power under Section 389(1) of the Code of Criminal Procedure to stay the execution of the conviction. However, the court observed in para 16 of the judgement that the execution of the conviction can be stayed only in certain situation and for that attention of the appellate court must be specifically invited to the consequential that is likely to follow. The court also observed that the appellant cannot suppress the special

purpose for which he seeks suspension of the conviction.

The power under Section 389(1) or Section 482 of the Cr.P.C. to stay conviction must be exercised by the appellate court only in a rare case and it should not be exercised as a matter of course. The consideration for suspension of sentence and suspension of conviction are different. Therefore, there must be a separate application for suspension of the conviction. The applicant is required to make out a very strong case on merit as well as on other grounds for the stay of the conviction. Ordinarily, in cases of moral turpitude the conviction should not be stayed. In such cases it is also desirable that a notice is given to the concerned disciplinary authority and they are heard before order staying the conviction is passed.

The Special Civil Application is accordingly rejected.

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